

**UNITED STATES DISTRICT COURT EASTERN DISTRICT  
CHATTANOOGA, TENNESSEE**

**FILED**  
FEB 22 2022  
Clerk, U. S. District Court  
Eastern District of Tennessee  
At Chattanooga

DOUGLAS A DYER

Civ. A. No.1:21-cv-299

*Petitioner*

V.

MICHELLE FULGAM, in her capacity as Acting Manager

Of the Nashville, TN RRM

*Respondent*

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**VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. 2241  
Response to Respondent Request to Dismiss**

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Douglas A. Dyer #52293-074

179 Callaway Ct

Chattanooga, Tn 37421

Michelle Fulgam, Nashville, Tn RRM

Residential Reentry Office

400 State St. Ste 800

Kansas City, KS 66101

Petitioner, Douglas A. Dyer, pro se, moves to respectfully request this court to deny Respondent's Motion To Dismiss. Petitioner has clearly established my entitlement to relief.

### **Facts**

The First Step Act (FSA) clearly made into law the awarding of Earned Time Credits (ETC) on December 21, 2018 (date of enactment). That law was clear and unambiguous as Congress clearly admonished the BOP on multiple occasions. This included Senate hearings, letters and directives to the BOP, The Attorney General, The Office of Inspector General and other "on the record" statements by multiple members of Congress. These were the members of Congress who authored, sponsored and voting the FSA into law. In these letters, directives and statements Congress made it clear that the BOP was to immediately award ETCs to each inmate according to the law that was written and authored by the Senate Judiciary Committee. This was a bi-partisan effort by Senators Durbin and Grassley.

This law never changed ! However, on January 13, 2022, more than 3 years after the law was enacted, the BOP, after immense Congressional pressure began awarding ETCs as they should have in January of 2020. This came on heels of Congressional hearings that lead to the ouster of Mr. Carvajal the head of the BOP and the recent new Senate committee that was tasked with investigating BOP corruption, the disaster of the BOP handling of the Covid-19 and the failure and outright ignoring of administering the First Step Act.

In the BOP's response to my Motion they falsely claim that I received already the benefit of the FSA by being sent to home confinement on June 30, 2020. With that claim the BOP is flat out lying. I was sent to home confinement under the CARES Act. The CARES Act was forced on the BOP by the President, The Attorney General and Congress to move medically vulnerable inmates to home confinement, who were close to their release date, had perfect disciplinary records and posed zero threat to the public to protect those inmates from the deadly Covid-19 virus that was spreading rapidly in the BOP prison system and causing close to 100 deaths. The CARES Act had absolutely nothing to do with the First Step Act. This is not even debatable.

To this date the BOP has yet to award me the over 9 months of Earned Time Credit that I was entitled to for the FSA. In fact, after going thru 120 days of Administrative Remedy procedures with the RRM, the BOP regional and national office, as well as this court the BOP has yet to verify the calculation.

After exhausting my Administrative remedies not once but twice, I have never received one single response relating to the calculation, much less the awarding of my ETC from the RRM, Regional or General Counsel. Not one.

I find it very interesting, and not a coincident that once I filed and mentioned that I should be compensated for the 9 months that I was illegally incarcerated that out of nowhere on January 13, 2022 the BOP decided to release me from home confinement without any calculation of my Earned Time Credits or any explanation to me whatsoever.

It took over 3 years of multiple Senators and US House of Representatives to go on the record with hearings, letters and directives to the Attorney General and the Office of Inspector General ( many of which were attached to my original Motion) did the BOP finally act.

The BOP tried to use “smoke and mirrors” and pretend that they decided to change the interpretation of the FSA on ETC, when in actuality they were just forced into following the law as it was written. It has become 100 % clear that the BOP did **not** have discretion on calculating and awarding ETCs. And yet in an embarrassing desperate manner in my case, the BOP continues to make statements that they did have discretion. This “about face” that the BOP made on January 13, 2022 with their “official” memo about awarding, crediting and retroactively going back to December 21, 2018 to calculate ETCs was a necessary but shameful act on the BOP, who got caught NOT upholding the law and Congressional intent.

With these facts being brought to light, it is clear that I was illegally incarcerated from April 2021 to January 13, 2022. It is without question that all the ETCs I earned ( and given evidence to in my original Motion) from December 21, 2018 should have been credited to me. It is now without question that Congressional interpretation that ETCs should be calculated from December 21, 2018 and the Congressional definition of a “day” is clear, not some arbitrary 8 hours that the BOP illegally tried to implement. Now after being admonished by the authors of the FSA and the Attorney General the BOP is implementing this correct interpretation. The fact of the matter is, THE LAW NEVER CHANGED and it took the dismissal of the head of the BOP and Congress forcing the BOP to adhere to the law as it was written and the clear interpretation of the authors of the law i.e. Senators such as Dick Durbin and Chuck Grassley.

Again, I respectfully ask this court which has the authority under 5 U.S.C. 706(1) that the BOP’s prior illegally interpretation and refusal to implement the FSA was capricious, arbitrary and purposely NOT in accord with the statute. Congress proved and demanded that the BOP had zero “Chevron deference” in its prior wrong and illegal interpretation of the FSA Earned Time Credits.

I should be compensated, monetarily for the 9 months that I was illegally incarcerated. In the alternative or in addition at a bare minimum I should be given my 9 months of ETCs to be utilized to reduce the 3 year term of my supervised release.

Your honor, it is amazing that the BOP spent so much time, effort and money to try and prevent deserving inmates such as myself and over 65,000 others from being awarded the ETCs that Congress and the law mandated. Congress allocated \$120,000,000 over the last 3 years to the BOP, above their normal budget to implement the FSA and yet they seem to have spent that money in court fighting the thousands of Motions from inmates simply asking for their ETCs to be credited as Congress intended. To add “insult to injury” for the BOP in January of 2022 falsely act like the BOP has changed their ‘policy’ and go back and retroactively credit ETCs that were earned from December 21, 2018 “out of the goodness of their heart” when in reality they forced by Congress to finally obey the law.

Had the BOP obeyed the law and Congressional "on the record" intent and interpretation that was mandated by Congress on numerous occasions, maybe some of the deserving inmates who died while in custody of Covid-19 may have been alive today if the BOP had rightful awarded them their ETC, rather than the BOP delaying until Congress forced their hand to follow the law as written. This has left a shameful stain on history.

It is hard to fathom that the BOP for over 3 years has had the audacity to take a law and use the BOP's own arbitrary and self-serving interpretation. To basically, for 3 years, tell Senators Durbin and Grassley, members of Congress, the Attorney General and the President who all worked so hard to pass one of the few bi-partisan pieces of legislation that "we, the BOP know how to interpret this law better than those who actually authored and sponsored this law". And then , as in my case for the BOP and the AUSA to "double down" and continue to spend time, effort, money and this court's time to continue to try and deny ETCs, even after being caught illegally withholding ETCs to over 65,000 inmates. To also try and claim in Ms. Breneman's Motion "....before the BOP promulgated it's final rule about FSA time credits...". When in actuality the "final rule" was made by Congress on December 21, 2018. The "final rule" was NEVER changed. The law as written was NEVER changed, until the BOP was caught by Congress for illegally refusing to administer this law for over 3 years. Then for Ms. Breneman to have the arrogance to say that the BOP recently changed the law ? This is mind-boggling.

As I have said in my original Motion I am not a lawyer, however I took a Civics class in school. I was taught that the people elect Congress, Congress proposes a bill, votes to approve a bill and then the President signs it into law. I must have been absent that day in class where they told us that all of that doesn't matter until a government "agency" decides it can ignore the law for over 3 years until as Ms. Breneman says the "BOP can promulgate its final rule".

Thank goodness Congress did not stand idly by and let this injustice continue. Thank goodness Congress has recently set up a new committee to address the corruption and missmangement of the BOP, so the BOP can no longer ignore laws and statutes as they are written.

Your honor, I respectfully request that this court deny the BOP Motion to dismiss my Motion. I request that the BOP lawfully award my Earned Time Credits, be compensated for the 9 months I have been illegally incarcerated and reduce the amount of time of my supervised release.

Respectfully submitted

Douglas A. Dyer #52293-074

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